

AMENDATORY SECTION(Amending WSR 01-14-009, filed 6/22/01, effective 8/1/01)

WAC 391-35-020 Time for filing petition -- Limitations on results of proceedings.

TIMELINESS OF PETITION

(1) A unit clarification petition may be filed at any time, with regard to:

(a) Disputes concerning positions which have been newly created by an employer.

(b) Disputes concerning the allocation of employees or positions claimed by two or more bargaining units.

(c) Disputes under WAC 391-35-300 concerning a requirement for a professional education certificate.

(d) Disputes under WAC 391-35-310 concerning eligibility for interest arbitration.

(e) Disputes under WAC 391-35-320 concerning status as a confidential employee.

(f) Disputes under WAC 391-35-330 concerning one-person bargaining units.

(2) A unit clarification petition concerning status as a supervisor under WAC 391-35-340, or status as a regular part-time or casual employee under WAC 391-35-350, is subject to the following conditions:

(a) The signing of a collective bargaining agreement will not bar the processing of a petition filed by a party to the agreement, if the petitioner can demonstrate that it put the other party on notice during negotiations that it would contest the inclusion or exclusion of the position or class through a unit clarification proceeding, and it filed the petition prior to signing the current collective bargaining agreement.

(b) Except as provided under subsection (2)(a) of this section, the existence of a valid written and signed collective bargaining agreement will bar the processing of a petition filed by a party to the agreement unless the petitioner can demonstrate, by specific evidence, substantial changed circumstances during the term of the agreement which warrant a modification of the bargaining unit by inclusion or exclusion of a position or class.

LIMITATIONS ON RESULTS OF PROCEEDINGS

(3) Employees or positions may be removed from an existing bargaining unit in a unit

clarification proceeding filed within a reasonable time period after a change of circumstances altering the community of interest of the employees or positions.

(4) Employees or positions may be added to an existing bargaining unit in a unit clarification proceeding:

(a) Where a petition is filed within a reasonable time period after a change of circumstances altering the community of interest of the employees or positions; or

(b) Where the existing bargaining unit is the only appropriate unit for the employees or positions.

(5) Except as provided under subsection (4) of this section, a question concerning representation will exist under [chapter 391-25 WAC](#), and an order clarifying bargaining unit will not be issued under [chapter 391-35 WAC](#):

(a) Where a unit clarification petition is not filed within a reasonable time period after creation of new positions.

(b) Where employees or positions have been excluded from a bargaining unit by agreement of the parties or by a certification, and a unit clarification petition is not filed within a reasonable time period after a change of circumstances.

(c) Where addition of employees or positions to a bargaining unit would create a doubt as to the ongoing majority status of the exclusive bargaining representative.

(6) Where a petitioning union seeks severance of a portion of an existing bargaining unit of classified employees at a school district or educational service district, appropriate bargaining units existing on July 25, 2005, may not be divided into more than one appropriate bargaining unit without the agreement of the employer and certified bargaining representative of the unit where severance is sought.

[Statutory Authority: [RCW 28B.52.080](#), [41.56.090](#), [41.59.110](#), [41.58.050](#), [34.05.413](#), [41.56.060](#) and [41.59.080](#). 01-14-009, § 391-35-020, filed 6/22/01, effective 8/1/01; 96-07-105, § 391-35-020, filed 3/20/96, effective 4/20/96. Statutory Authority: [RCW 41.58.050](#), [28B.52.080](#), [41.56.090](#), [41.59.110](#) and chapters [28B.52](#), [41.56](#), [41.58](#), [41.59](#), [49.08](#) and [53.18](#) RCW. 90-06-073, § 391-35-020, filed 3/7/90, effective 4/7/90. Statutory Authority: [RCW 28B.52.080](#), [41.58.050](#), [41.56.090](#) and [41.59.110](#). 88-12-061 (Order 88-03), § 391-35-020, filed 5/31/88.]

NEW SECTION

WAC 391-35-085 Amendment of certification. A party may file a petition to amend an existing certification, and the executive director may amend the certification, provided that the purpose of the amendment is to reflect changed circumstances such as the name of a labor organization or the name of an employer, and the bargaining unit is not affected by the change and there is no question concerning representation.

AMENDATORY SECTION(Amending WSR 01-14-009, filed 6/22/01, effective 8/1/01)

WAC 391-35-170 Hearings -- Reopening of hearing -- Briefs. (1) Hearings shall be public, except where a protective order is issued under [WAC 10-08-200](#)(7), and shall be limited to matters concerning the clarification of the existing bargaining unit.

(a) The parties shall be responsible for the presentation of their cases.

(b) The hearing officer shall ascertain the respective positions of the parties, to obtain a full and complete factual record upon which the agency may discharge its responsibilities under the applicable statute. The hearing officer has authority, under [WAC 10-08-200](#) (8) and (9), to ask questions, call witnesses, and explore matters not raised or only partially raised by the parties.

(2) Once a hearing has been declared closed, it may be reopened only upon the timely motion of a party upon discovery of new evidence which could not with reasonable diligence have been discovered and produced at the hearing.

(3) The hearing officer may allow or direct the filing of briefs as to any or all of the issues in a case. Arrangements and due dates for briefs shall be established by the hearing officer. Any brief shall be filed with the hearing officer as required by [WAC 391-08-120](#)(1), and copies shall be served on all other parties to the proceeding as required by [WAC 391-08-120](#) (3) and (4).

(4) A party filing a brief under this section must limit its total length to twenty-five pages (double-spaced, twelve-point type), unless:

(a) It files and serves a motion for permission to file a longer brief in order to address novel or complex legal and/or factual issues raised by the objections;

(b) The executive director, his or her designee, or hearing officer grants such a motion for good cause shown; and

(c) A motion for permission to file a longer brief may be made orally to the hearing officer at the end of the administrative hearing, and the hearing officer has the authority to orally grant such a motion at such time.

[Statutory Authority: [RCW 28B.52.080](#), [41.56.090](#), [41.59.110](#), [41.58.050](#), [34.05.437](#), [41.56.060](#) and [41.59.080](#). 01-14-009, § 391-35-170, filed 6/22/01, effective 8/1/01; 00-14-048, § 391-35-170, filed 6/30/00, effective 8/1/00; 98-14-112, § 391-35-170, filed 7/1/98, effective 8/1/98; 96-07-105, § 391-35-170, filed 3/20/96, effective 4/20/96. Statutory Authority: [RCW 41.58.050](#), [28B.52.080](#), [41.56.090](#), [41.59.110](#), [41.56.060](#), [41.59.080](#) and [53.18.015](#). 90-06-073, § 391-35-170, filed 3/7/90, effective 4/7/90. Statutory Authority: [RCW 28B.52.080](#), [41.56.040](#), [41.58.050](#), [41.59.110](#) and [47.64.040](#). 80-14-047 (Order 80-6), § 391-35-170, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION(Amending WSR 01-14-009, filed 6/22/01, effective 8/1/01)

WAC 391-35-190 Proceedings before the executive director. (1) The executive director may proceed upon the record, after submission of briefs or after hearing, as may be appropriate. The executive director shall determine the status of each position, classification or group of employees over which there is a disagreement and issue an order clarifying bargaining unit, dismiss the petition or make other disposition of the matter.

(2) Where the executive director determines that employee eligibility issues exist, the executive director may delegate authority to the hearing officer to decide those issues.

(3)(a) A party seeking review by the commission of an interlocutory decision of the executive director, his or her designee, or hearing officer must file a motion for discretionary review with the commission and a copy with the executive director or his or her designee within seven days after the decision is issued.

(b) Discretionary review of an interlocutory decision issued by the executive director, his or her designee, or hearing officer will be accepted by the commission only:

(i) If the executive director, his or her designee, or hearing officer has committed an obvious error which would render further proceedings useless; or

(ii) If the executive director or his or her designee has committed probable error and the decision of the executive director, his or her designee, or hearing officer substantially alters the status quo or substantially limits the freedom of a party to act; or

(iii) If the executive director, his or her designee, or hearing officer has so far departed from the accepted and usual course of administrative proceedings as to call for the exercise of revisory jurisdiction by the commission.

(c) A motion for discretionary review under this rule, and any response, should not exceed fifteen pages double-spaced, excluding appendices.

(d) Denial of discretionary review of a decision does not affect the right of a party to obtain later review of the executive director's, his or her designee's, or hearing officer's decision or the issues pertaining to that decision.

(4) Unless appealed to the commission under [WAC 391-35-210](#), a decision issued under this section shall be the final order of the agency, with the same force and effect as if issued by the commission.

[Statutory Authority: [RCW 28B.52.080](#), [41.56.090](#), [41.59.110](#), [41.58.050](#), [41.56.060](#) and [41.59.080](#). 01-14-009, § 391-35-190, filed 6/22/01, effective 8/1/01; 98-14-112, § 391-35-190, filed 7/1/98, effective 8/1/98; 90-06-073, § 391-35-190, filed 3/7/90, effective 4/7/90. Statutory Authority: [RCW 34.04.022](#), [41.58.050](#), [41.56.090](#), [41.59.110](#) and [28B.52.080](#). 85-19-059 (Resolution No. 85-01), § 391-35-190, filed 9/16/85.

Statutory Authority: [RCW 28B.52.080](#), [41.56.040](#), [41.58.050](#), [41.59.110](#) and [47.64.040](#). 80-14-047 (Order 80-6), § 391-35-190, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION(Amending WSR 00-14-048, filed 6/30/00, effective 8/1/00)

WAC 391-35-210 Appeals. An order issued under [WAC 391-35-190](#) and any rulings in the proceedings up to the issuance of the order may be appealed to the commission as follows:

(1) The due date for a notice of appeal shall be twenty days following the date of issuance of the order being appealed. The time for filing a notice of appeal cannot be extended.

(2) Where an order has been appealed, the due date for a notice of cross-appeal by other parties shall be seven days after the last date on which a notice of appeal could be timely. The time for filing a notice of cross-appeal cannot be extended.

(3) A notice of appeal or notice of cross-appeal shall identify, in separate numbered paragraphs, the specific rulings, findings of fact, conclusions of law, or orders claimed to be in error.

(4) A party which desires to cite or reassert a document previously filed in the matter shall do so by reference to the document already on file, and shall not file or attach another copy of the document to papers filed regarding an appeal.

(5) A notice of appeal or notice of cross-appeal shall be filed at the commission's Olympia office as required by [WAC 391-08-120](#)(1), and copies shall be served on all other parties as required by [WAC 391-08-120](#) (3) and (4).

(6) The due date for any appeal brief which the party filing an appeal or cross-appeal desires to have considered by the commission shall be fourteen days following the filing of its notice of appeal or notice of cross-appeal. Any brief shall be filed at the commission's Olympia office as required by [WAC 391-08-120](#)(1), and copies shall be served on all other parties as required by [WAC 391-08-120](#) (3) and (4).

(7) The due date for any responsive brief which a party desires to have considered by the commission shall be fourteen days following the date on which that party is served with an appeal brief. Any brief shall be filed at the commission's Olympia office as required by [WAC 391-08-120](#)(1), and copies shall be served on all other parties as required by [WAC 391-08-120](#) (3) and (4).

(8) The executive director or designee may extend the due date for an appeal brief or responsive brief. Such requests shall only be considered if made on or before the date the brief is due, and in compliance with [WAC 391-08-180](#). Extensions of time shall not be routine or automatic.

(9) A party filing a brief under this section must limit its total length to twenty-five pages (double-spaced, 12-point type), unless:

(a) It files and serves a motion for permission to file a longer brief in order to address novel and/or complex issues raised by the appeal; and

(b) The commission or its designee grants such a motion for good cause shown. Any motion filed under this subsection shall toll the due date for briefs under subsections (1) and (2) of this section until the commission or its designee responds to such motion.

NEW SECTION

WAC 391-35-301 Higher education employees. A bargaining unit of higher education employees under [RCW 41.56.021](#) shall not include any employees eligible for collective bargaining rights under [RCW 41.56.022](#), 41.56.024, or 41.56.203, chapter 28B.52, 41.76, or 41.80 RCW. Employees whose eligibility for collective bargaining is covered by chapter 28B.52, 41.76, or 41.80 RCW are exempt from the provisions of [RCW 41.56.021](#).